

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

William Francis, Jr.,)	
)	
Plaintiff,)	
)	
v.)	C.A. No.07-015-JJF
)	Jury Trial Demanded
Correctional Medical Services, Inc., et al,)	
)	
Defendants.)	

**STATE DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION TO COMPEL
ANSWERS TO INTERROGATOIES**

COME NOW, the Defendants Taylor, Carroll, and Talley, by and through undersigned counsel, and hereby respond in opposition to plaintiff's request to compel answers to interrogatories as moot. In support of this opposition, Answering Defendants offer the following:

1. On or about January 9, 2007, plaintiff, *pro se*, filed a complaint for damages against Defendants Taylor, Carroll, and Talley for claims in connection with the exercise of their official powers and duties within the Department of Correction (D.I. 2). Plaintiff amended his complaint on April 23, 2007 (D.I. 10).

2. On or about Thursday, February 28, 2008, undersigned counsel received electronic notice of interrogatories propounded to Defendants Taylor, Carroll, and Talley (D.I.48). State Defendant Taylor is retired from state employment. State Defendant Carroll is no longer the warden at the Delaware Correctional Center.

3. On or about April 7, 2008, Plaintiff filed a motion requesting this Honorable Court to compel Defendants, Taylor, Carroll and Talley to answer interrogatories (D.I. 51).

Plaintiff contends that the Defendants have “failed to answer interrogatories ... in the allotted time proscribed by Rules 33 and 37(a) of the Federal Rules of Civil Procedure.” Id. He asks the Court to direct the Defendants “to answer under oath” and for the payment of “reasonable expenses, including attorney’s fees, incurred in obtaining this order.” Id. At best, plaintiff’s motion to compel defendants to answer is premature.

4. On April 8, 2008, unaware that plaintiff filed his motion on the preceding day, these defendants were able to serve and file full and complete answers to the interrogatories with individual verifications (D.I. 50).

5. Federal Rules of Civil Procedure Rule 37(a) (1) provides: “[o]n notice to other parties..., a party may move for an order compelling ...discovery. The motion must include a certification that the movant has in good faith conferred or attempted to confer with ...party failing to make discovery in an effort to obtain it without court action.”

6. At no time prior to filing this motion to compel has plaintiff, in good faith, conferred or attempted to confer in an effort to obtain the answers before filing this action. Moreover, plaintiff does not set forth in his motion any contentions that Defendants have offered insufficient or inadequate responses to relevant discovery requests. *Westchester Fire Insurance Co., v. Household International, Inc.*, 2005 WL 23351 (D. Del.).

7. Generally, a party failing, without justification, to provide disclosure or discovery before the motion to compel was filed is obligated to pay the movant’s reasonable expenses incurred in making the motion. However, the rules are clear, the court “must not order this payment if the movant filed the motion before attempting in good faith to obtain the disclosure or discovery without court action.” Fed.R.Civ.P. Rule 37(a)(5)(A)(i). Clearly, Plaintiff has not demonstrated that a dispute exists which necessitates the Courts intervention.

WHEREFORE, for the hereinabove reasons, Defendants Taylor, Carroll, and Talley respectfully requests that this Court enter an Order denying Plaintiff's Motion to Compel them to answer the interrogatories and/or pay expenses and fees for filing this motion.

**STATE OF DELAWARE
DEPARTMENT OF JUSTICE**

/s/ Ophelia M. Waters,
Ophelia M. Waters, ID#3879
Deputy Attorney General
Department of Justice
820 N. French Street, 6th Floor
Wilmington, Delaware 19801
Attorney for Taylor, Carroll, and Talley

Dated: April 17, 2008

CERTIFICATE OF SERVICE

I hereby certify that on April 17, 2008, I electronically filed *State Defendants' Motion in Opposition to Compel* with the Clerk of Court using CM/ECF. I hereby certify that on April 17, 2008, I have mailed by United States Postal Service, the document to the following non-registered participant:

William Francis, Jr., Inmate
SBI # 264560
Delaware Correctional Center
1181 Paddock Road
Smyrna, DE 19977

**STATE OF DELAWARE
DEPARTMENT OF JUSTICE**

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